Johnson Technology, Inc. *and* International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO. Case 7–CA–43375

August 27, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On July 31, 2001, Administrative Law Judge Earl E. Shamwell, Jr., issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to which the Respondent filed a reply brief. The General Counsel filed cross-exceptions to the judge's decision and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] as modified below and to adopt the recommended Order as modified.[3]

1. We adopt the judge's finding that the Respondent violated Section 8(a)(1) by removing the union meeting notice posted by employee David LaNore on August 29, 2000,[4] by disparately prohibiting him from posting union literature on employee bulletin boards, and by threatening him with discipline for his postings. We also agree that the Respondent did not violate Section 8(a)(1) when Director of Marketing Jasick told LaNore that he could not use company paper for preparing union notices.

On the morning of August 29, LaNore posted on the bulletin board in the employees' breakroom a notice of three union meetings on August 30. Later that same morning, LaNore observed that the notice was missing.[5] While he was on a work break, LaNore took a piece of paper from the photocopy area and began to draft another union meeting notice for posting. The Respondent reused paper for general in-house copying, so that both sides could be used. The paper LaNore took had been used on only one side.

While LaNore was writing the notice in the breakroom, Supervisor Zaagman approached him, took the piece of paper from him, and identified it as company property. Zaagman told LaNore that he could not write about the Union on company property, on company time, and that LaNore could not post anything about the Union on the bulletin boards. Later that day, Zaagman told LaNore that he was going to report the breakroom incident and have LaNore suspended.

Thereafter, Jasick met with LaNore concerning the incident. According to Jasick's testimony, he asked LaNore to confirm that he had been seen making a notice of a union meeting on company-owned materials earlier that day. LaNore ultimately acknowledged that he used a piece of paper from the photocopy area, but did not consider the paper company property. Jasick told LaNore that the ground he was standing on, the machinery, the podium he was leaning against, and even the piece of paper in a wastepaper basket were all company material, and that he was not to use such material or company assets during work hours to generate and post notices.[6]

The General Counsel excepts to the judge's failure to find that the prohibition on using company personalty, here a piece of paper reserved for reuse, for posting a union notice was unlawful. The judge found that the prohibition was lawful because the Respondent has absolute control over its personalty regardless of the property's intrinsic value. The General Counsel argues that

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] No exceptions were filed to the judge's finding that the Respondent harbored antiunion animus or to the judge's dismissal of the allegation that the Respondent conducted a campaign of harassment and closer supervision against employee Dave LaNore.

We find it unnecessary to pass on the allegation, dismissed by the judge, that the Respondent unlawfully interrogated employee LaNore. Such a finding would be cumulative and would not affect the remedy, in light of our finding that the Respondent unlawfully interrogated employee Jennifer Minarovic. Chairman Battista would affirm the judge's dismissal of the LaNore interrogation allegation.

Member Schaumber notes that he does not necessarily endorse all of the statements characterizing Board law set forth at Sec. V of the judge's decision.

[3] We will substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc*., 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

[4] Unless otherwise noted, all dates hereafter are in 2000.

[5] Based on the admission of supervisor John Zaagman that he had removed union meeting notices, the judge found that it was probably Zaagman who had removed LaNore's posting.

[6] LaNore and Jasick testified somewhat differently about what was said. LaNore testified that Jasick claimed that he had learned that LaNore had been seen writing about the Union on company property. When LaNore failed to confirm this was true, Jasick told LaNore to, "understand this, the floor he was standing on, the tables used in the break room, everything in the building, except the clothes on LaNore's back, belongs to the Company." We agree with the judge that it is unnecessary to distinguish between the two versions of the testimony.

the Respondent's property interest in the paper is insignificant and that the Respondent's purpose for confiscating the piece of paper was to prevent LaNore from engaging in protected union activity. We do not disagree that paper, like office supplies, photocopies or local phone calls, may have only a modest value, however, we conclude, as did the judge, that it is not unlawful for an employer to caution employees to restrict the use of company property to business purposes.[7]

There is no credited record evidence that the Respondent permitted employees to use its paper or other personalty for nonwork related purposes.[8] Indeed, there is no evidence that any employee, other than LaNore, ever sought to use such paper for a nonwork-related reason.[9] One would expect that if the Respondent tolerated the use of its property for nonbusiness purposes, evidence of that practice would have been easy to come by and to put forward at the hearing. Absent any evidence of disparate treatment, we cannot find that the General Counsel proved that the Respondent violated Section 8(a)(1) by prohibiting the use of its paper for preparing a union meeting notice.[10]

Our dissenting colleague relies upon the assertions that the scrap paper had little pecuniary value and that the Respondent's response to LaNore's use of that paper was harsh. However, the issue is whether the use of the property was protected, not how much the property is worth. Similarly, where, as here, the use is unprotected, it is not the business of the Board to weigh the severity of the discipline.

We have considered the context of the warning issued by Jasick, *and* find that it does not support the result reached by the dissent. We recognize that the warning followed conduct *that* we and our colleague *find* violated the Act. We simply do not agree, *however*, that the Respondent forfeited its established right to limit the use of company property to business purposes because of this conduct. We also do not agree with the dissent's assertion that the Respondent had no policy in place concerning the use of what she describes as "scrap paper." Indeed, there was a policy that scrap paper is recycled for later use, and the dissent acknowledges record evidence that the paper is recycled. The dissent appears to fault the Respondent for failing to introduce additional corroborating evidence. However, there is no basis for requiring more evidence from the Respondent. In light of the evidence the Respondent did present, it was for the General Counsel to prove either that the Respondent did not have a policy governing the personal use of its property or that the policy had not been enforced. *No such* evidence of this character in this case *was introduced*.

At bottom, then, the dissent finds that the warning was unlawful because the use of the paper was, in our colleague's view, a "trivial" offense which Jasick should have overlooked. It is well settled, however, that "the Board should not substitute its own business judgment for that of the employer in evaluating whether an employer's conduct is unlawful." *Framan Mechanical*, 343 NLRB No. 53, slip op. at 5 (2004). We decline to do so in this case.

2. For the reasons that follow, we find, contrary to the judge, and our dissenting colleague that the Respondent did not violate Section 8(a)(1) by soliciting grievances and impliedly promising to remedy them.

On October 4, 2000, Jasick approached employee Minarovic while she was working at her machine. Jasick began the conversation by asking how she was doing, and he then said that he was wondering how "we" could improve things in the cell. He also asked her how she felt about the Union, and commented that her name was not checked off on a list he had. In response, Minarovic voiced some criticisms of the Respondent's promotion policies, which she had informally been complaining about for a year. Jasick replied that he would get in

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[7] Apart from the caution not to use company paper for preparing union notices, LaNore was not disciplined for the incident.

[8] In support of its position that LaNore had a Sec. 7 right to use the paper for a union meeting notice, the General Counsel cites *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 797–798 (1945). The case is not analogous. The issue in *Republic Aviation* was whether an employer's right to control the activities of employees lawfully on its premises was subject to limitations to accommodate the employees' Sec. 7 rights, such as to engage in prounion solicitations. Here, the question is whether an employee can take and use the employer's personalty, without its consent, to engage in a nonwork-related purpose such as a Sec 7 activity .

[9] LaNore testified that other employees used the scrap paper for notices of items for sale or other information but the judge specifically discredited that testimony because it was uncorroborated and self-serving.

[10] *Salvation Army Residence*, 293 NLRB 944, 981, 982 fn. 142 (1989) (employee lawfully discharged for removing from premises stained, discarded carpet left by incinerator: "the fact that the carpeting involved was of small apparent value is a subjective factor unrelated to the lawfulness of the discharges under the Act.").

The dissent argues that this case is distinguishable from *Salvation Army* because the removal of the carpet was contrary to the employer's policy and procedures. We disagree. As noted herein, we have found that the Respondent did establish that it had a policy against the personal use of its property. Moreover, while the Board in *Salvation Army* recognized that the employer had a policy of requiring a property pass for the removal of employer property (although the policy had not been uniformly or effectively enforced), it specifically stated that its finding that the discharge was lawful "do[es] not rest on whether the policy was followed but on whether, from all evidence, the Respondent had had reasonable cause to believe that the two men had removed its property without authorization and had acted on that belief." In this case as well, the Respondent had a reasonable belief that LaNore used its paper and acted on that belief.

touch with her boss about this matter, but made no other reference to this issue.

According to Minarovic's testimony, it appears that prior to the onset of any organizational efforts by the Union at the Respondent's plant, the Respondent had an established pattern of soliciting employee grievances. Jasick and other supervisors routinely discussed problems and concerns directly with employees and relayed them to higher management. According to Minarovic's credited testimony, improvements in the plant were an ongoing matter. She also testified that she had expressed concerns to Jasick about the temperature in the plant and to her supervisor about her perception of unfair promotion practices. The judge found that Jasick had a custom of asking Minarovic about how things were on the job.[11]

The Respondent has excepted to the judge's findings that Jasick unlawfully solicited grievances from employee Minarovic. For the following reasons, we find merit in the Respondent's exception.[12]

It is well established than an employer with a past practice of soliciting employee grievances may continue such a practice during a union's organizational campaign. See *Wal-Mart Stores, Inc.*, 340 NLRB No. 76, slip op at 4 (2003). It is also well established that it is not the solicitation of grievances itself that violates the Act, but the employer's explicit or implicit promise to remedy the solicited grievances that impresses upon employees the notion that union representation is unnecessary. Id., citing *Maple Grove Health Care Center*, 330 NLRB 775 (2000); *Uarco, Inc*. 216 NLRB 1, 2 (1974).

During the conversation in question, Jasick asked Minarovic how things were going, apparently referring to recent changes that had been made in her work area and generally inquiring about improvements. Minarovic raised concerns about the promotion system. She also testified that this was an issue she had discussed previously with her supervisor. We find that Jasick's question was in keeping with the Respondent's ongoing dialogue with its employees and efforts to improve its operations, and did not constitute an unlawful solicitation of grievances from Minarovic.

Further, Jasick's reply to Minarovic that he "would get in touch with her boss about it" must also be analyzed in the context of the Respondent's ongoing dialogue with employees. We find that Jasick did not expressly or impliedly promise to remedy the concern that Minarovic raised about the promotion system. Rather, the statement merely conveyed that Jasick would relay Minarovic's concerns to her supervisor, something that he had previously done. Under these circumstances, we conclude that this exchange does not support a finding that Jasick solicited grievances and/or promised to remedy them.

Our dissenting colleague finds the evidence cited above insufficient to show a cognizable past practice because "those discussions may *well have been* wholly employee-initiated" (emphasis supplied). The Respondent, however, established a general past practice of soliciting grievances and has shown that Jasick had previously solicited grievances with Minarovic. In light of this evidence, our colleague's speculation that those past solicitations might be different because they might have been employee-initiated is an insufficient basis on which to base a violation of Section 8(a)(1). The dissent also cites, as a basis for finding an unlawful solicitation of grievances, the fact that during Jasick's solicitation he asked Minarovic a coercive question. Jasick's inquiry as to how Minarovic felt about the Union has been addressed by our finding of an 8(a)(1) interrogation. The occurrence of this coercive question, however, did not change the method by which Minarovic's grievances were solicited so as to render the solicitation inconsistent with past practice and unlawful. To conclude otherwise confuses distinct theories of violations developed under a long history of Board law.

For all these reasons, we shall reverse the judge and dismiss this allegation of an unlawful solicitation of grievances and promise of benefits.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, Johnson Technology, Muskegon, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

1. Substitute the following for paragraph 1(c):

"(c) Threatening employees with discipline for posting union literature on employees' bulletin boards and/or in employee breakrooms."

2. Delete paragraph 1(e).

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. August 27, 2005

Robert J. Battista, Chairman

[11] Based on the testimony described in this paragraph, we reject the dissent's contention that there was no past practice of soliciting grievances. Concededly, the Respondent may have solicited grievances as to Minarovic on only a few occasions. However, this is not inconsistent with the testimony that there was a general past practice.

[12] We do agree with the judge's finding that Jasick unlawfully questioned Minarovic regarding her views of the Union and, therefore, violated Sec. 8(a)(1) of the Act.

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER LIEBMAN, dissenting in part.

When a high-level company official orders an employee into his office and warns him for using a single piece of company scrap paper to make a union meeting notice—after a supervisor had removed an earlier notice—union activity is chilled. And when the same official approaches another employee, asks how she feels about the union, inquires how things could be improved, listens to her complaint, and then responds that he will get in touch with her boss, the employer has solicited and promised to remedy a grievance, which dissuades employees from supporting the union. Contrary to the majority, I do not believe that an employer's supposed property interest in a piece of scrap paper is a license to interfere with statutorily protected activity. Nor does seeking occasional feedback from employees authorize an employer to invite the belief that employee support will be bought, if necessary.

I.

The facts related to the scrap paper incident make the violation clear.

On the morning of August 29, 2000, employee David LaNore posted on a breakroom bulletin board a notice concerning an upcoming union meeting. The judge found that Supervisor John Zaagman probably removed this notice, based on his admission that he had removed such notices. When LaNore saw that the notice had been removed he retrieved a piece of scrap paper solely for the purpose of replacing the notice. Zaagman saw him rewriting the notice on a work break and told him that he could not write about the Union on company property, on company time, and that he could not post anything about the Union on the bulletin boards. Zaagman later told LaNore that he was going to report the breakroom incident and have LaNore suspended. The majority agrees that Zaagman's statements were unlawful.

LaNore was then summoned to meet with Director of Manufacturing Tom Jasick. Following a short exchange as to what had occurred, Jasick told LaNore to "understand this, the ground [LaNore] was standing on, the machinery, the podium he was leaning against, and even a piece of paper in a wastepaper basket were all company materials," and that LaNore was not to use any such materials to generate and post notices. Jasick also intimated that further disciplinary measures might follow from LaNore's misconduct.

The judge found not only that "Zaagman's conduct was clearly coercive," but also that Jasick's subsequent meeting with LaNore was "a continuation of the breakroom incident." Rather than correct Zaagman's coercive conduct, Jasick raised the incident to a yet more coercive level. The link between Jasick's summons and threat and Zaagman's admittedly unlawful threat of discipline for engaging in union activities could not have escaped a reasonable employee. Jasick's warning to LaNore, in context, clearly sent the message that any misconduct, no matter how trivial, would be dealt with harshly if it involved union activity.

The majority and the judge ignore this context, however, and instead focus entirely on the Respondent's purported effort to protect its "personalty." From this mistakenly narrow perspective, it is no wonder that the majority fails to see the violation here.

There is no evidence that this is a situation where an employer has a rule regarding use of company property that most would consider exceptionally strict, but which is well known to the employees and uniformly enforced. The Respondent had no policy or procedure in place concerning employee use of scrap paper.[13] Contrary to the majority's assertion, the evidence on the Respondent's practice of recycling paper nowhere indicates that employees were barred themselves from using recycled paper. The Respondent's implicit assertion that its response to LaNore's misuse of scrap paper had no connection to his union activity, and that his writing on a single piece of scrap paper was such severe misconduct that it not only warranted a threat of discipline from LaNore's supervisor, but also demanded the personal attention of, and a stern warning from, the Respondent's manufacturing director, is laughable.[14] As is the majority's conclusion that this elaborate demonstration of managerial authority was for the sake of a single sheet of company scrap paper. Certainly a reasonable employee in LaNore's position would understand the real message.

II.

In finding that the Respondent did not unlawfully solicit grievances and impliedly promise to remedy them, the majority also fails to consider the context in which

[13] For this reason the majority's reliance on *Salvation Army Residence*, 293 NLRB 944, 982 fn. 142 (1989) is misplaced. There, unlike here, the employer had a policy and set of procedures for employees to follow when removing discarded furniture and other items from the employer's premises.

[14] Cf. *Robert F. Kennedy Medical Center*, 332 NLRB 1536 (2000)(respondent did not show that it would have discharged employees for using company stationery even if their letter had not contained a concerted protest).

Director of Manufacturing Jasick's statements to employee Jennifer Minarovic were made.

Several weeks after his confrontation with LaNore, Jasick approached Minarovic at work and asked how she was doing. Jasick said that he was wondering how "we" could improve things in the cell, inquired how she felt about the Union, and commented that her name was not checked off on a list he had. Minarovic voiced some criticism of company promotion policies, a complaint she had been making for about a year without redress. Jasick replied that he would get in touch with her boss about the matter.

The majority rightly finds that the Respondent unlawfully interrogated Minarovic concerning her union sympathies, but asserts that Jasick's conversation with Minarovic did not involve an unlawful solicitation of grievances because the Respondent had a practice of asking for employee feedback about company changes and gathering information on employees' concerns. But the particular circumstances of the conversation at issue set it apart from the Respondent's past practice.

First, although Jasick testified that the Respondent followed up company changes by seeking feedback regarding those changes, such a practice would not explain Jasick's questioning of Minarovic, which was not specifically identified with any changes implemented by the Respondent, but rather was open-ended in scope.[15]

More important, Jasick solicited Minarovic's complaints while in the same breath inquiring whether she supported the Union, clearly intimating that the solicitation was connected to her views regarding the desirability of unionization. When Minarovic complained about the company's promotion policy and explained that she had discussed her concerns repeatedly with her supervisor to no effect, Jasick promised to take up the matter himself directly. This was a promise of a long sought-after benefit, made by a high-level official. Combined with Jasick's inquiry about Minarovic's union views, it would clearly tend to dissuade her from supporting the Union, thereby interfering with the free exercise of her Section 7 rights. See *House of Raeford Farms*, 308 NLRB 568, 569 (1992).[16]

Dated, Washington, D.C. August 27, 2005

Wilma B. Liebman, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT disparately prohibit you from writing and posting union literature on employee bulletin boards and/or in employee breakrooms.

WE WILL NOT disparately remove union literature posted on employee bulletin boards in employee breakrooms.

WE WILL NOT threaten you with discipline for posting union literature on employee bulletin boards in employee breakrooms.

WE WILL NOT inform you that you may only converse about the Union during breaks, lunch, and after work, while allowing, without restriction, conversations about other nonwork related topics.

[15] The majority's finding that Jasick and other supervisors routinely discussed problems and concerns does not address the issue of whether the Respondent had a past practice of soliciting grievances comparable to Jasick's solicitation, as those discussions may well have been wholly employee-initiated. Also, the judge's comment that Jasick customarily asked Minarovic about how things were on the job provides scant support for the majority's finding of a past practice, in view of the fact that Minarovic (whom the judge generally credited) testified that she had conversed with Jasick only two or three times during her 5 years of employment with the Respondent.

[16] The majority implies that there was no promise of benefit here, hence no unlawful conduct, citing *Wal Mart Stores, Inc*., 340 NLRB No. 76, slip op. at 4 (2003). Ordinarily, the promise of benefit is inferred from the employer's solicitation of grievances during the course of a union campaign. *Maple Grove Health Care Center*, 330 NLRB 775 (2000). Of course, where an employer shows that it had an extant "open door" policy, such an inference based solely on the commencement of a union campaign may be inappropriate. *Wal Mart Stores, Inc.*, 340 NLRB No. 76, slip op. at 4. Here, unlike in *Wal-Mart Stores, Inc.*, Jasick expressly interrogated an employee about the Union at the same time that he solicited her grievances. The clear association between Jasick's solicitation of grievances and his question about the Union restores the inference of a promise to remedy those grievances, even assuming, arguendo, that the Respondent has demonstrated a preexisting "open door" policy.

WE WILL NOT coercively interrogate you regarding your views of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

JOHNSON TECHNOLOGY, INC.

Richard F. Czubaj, Esq., for the General Counsel.
Robert W. Sikkel, Esq. and *Robert A. Dubault, Esq. (Warner Norcross & Judd L.L.P.),* of Muskegon, Michigan, for the Respondent.
Ann Hodges and *Steve Smith, Organizers,* International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, for the Charging Party.

DECISION

STATEMENT OF THE CASE

EARL E. SHAMWELL JR., Administrative Law Judge. This case was heard before me on January 30 and February 21, 2001, in Grand Rapids, Michigan, pursuant to an original charge filed on September 15, 2000, by the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO (the Union) against Johnson Technology, Inc. (the Respondent) and an amended charge filed against the Respondent by the Union on November 13, 2000. On November 20, 2000, the Acting Regional Director for Region 7 of the National Labor Relations Board (the Board) issued a complaint based on the aforesaid charges as amended. The complaint essentially alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) on several dates covering about August 29 through October 4, 2000,[1] by coercively interrogating employees about their union activities; promulgating overly broad rules that disparately prohibited employees from posting union literature on bulletin boards in employee breakrooms; threatening employees with discipline for making such postings; disparately removing union literature from employee breakrooms; soliciting employee grievances and suggesting that the Respondent would remedy them; and engaging in a campaign of harassment, that is, repeatedly and more closely watching and restricting movements of selected employee(s) at its facility.

The Respondent timely filed an answer to the complaint and, while admitting some allegations in the complaint, denied violating the Act in any way.[2]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the posthearing briefs filed by the General Counsel and the Respondent,[3] I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation,[4] with an office and place of business in Muskegon, Michigan, has been engaged in the manufacture and non-retail sale of aircraft parts. The Respondent admits, and I find, that in conducting its business operations during the calendar year ending December 31, 1999, it purchased and received at its Muskegon facility goods and materials valued in excess of $50,000 directly from points outside the State of Michigan. The Respondent further admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent operates two manufacturing facilities—designated the Latimer Building (the east side facility) and the Norton Building (the west side facility)—in the Muskegon, Michigan area. The Respondent employs about 422 hourly workers (designated associates) who are assigned to certain enumerated work areas (cells) around the plant. The Respondent operates on a 24-hour basis and divides the workday into three 8-hour shifts.[5] The Respondent's hourly employees include utility/maintenance workers, technicians (machine operators), and inspectors who are supervised by designated shift supervisors/coordinators.

At some point during the period covered by the allegations herein, the Union undertook a campaign to organize the Respondent's hourly employees and at least one of the hourly inspectors, David LaNore, was known by the Respondent to be a union supporter or sympathizer during the period in question.[6]

[1] At the hearing on February 21, the General Counsel orally requested an amendment of the complaint to reflect the alleged commission of an unfair labor practice on October 4 as opposed to October 3. The Respondent did not object, and I granted the request.

[2] The Respondent admitted among other things that certain named individuals—Tom W. Jasick, John Zaagman, Robert (Bob) McFalls, and Roger Starring—were supervisors and agents within the meaning of Sec. 2(11) and (13) of the Act.

[3] The Charging Party Union did not file a brief.

[4] The General Counsel orally moved to amend the complaint at the hearing as follows: the caption of the complaint should read only Johnson Technology, Inc., the words, "a wholly owned subsidiary of GE (General Electric) Aircraft Engine Holdings, Inc." is redacted from the pleadings. (Tr. 11.) Notably, in its answer, the Respondent denied that it was a subsidiary of GE Aircraft (Engines) Holdings, Inc. I granted the proposed amendment.

[5] The first shift runs from 7 a.m. to 3 p.m.; second shift from 3 to 11 p.m.; and the third shift from 11 p.m. to 7 a.m.

[6] There was no testimony adduced as to the precise time the Union commenced its organizing efforts. However, clearly based on the credible parts of the record herein, the Union was actively seeking to represent the employees, that is, by posting notices and conducting meetings beginning some time in mid to late August 2000 and through early October 2000. Based on my review of the record, I would find and conclude that the Respondent became aware of these organizing

B. The Individual Incidents of Alleged Unlawful Activity by the Respondent[7]

1. The August 29 encounters between John Zaagman and Dave LaNore

The complaint alleges that on or about August 29, 2000, the Respondent, through its third-shift coordinator, John Zaagman, promulgated overly broad rules that disparately prohibited employees from writing and posting union literature on the bulletin boards in employee breakrooms; threatened employees with discipline for engaging in protected union activities; and disparately removed union literature from employee breakrooms.

These allegations emanate from an encounter between hourly inspector LaNore and admitted supervisor John Zaagman. The General Counsel called LaNore as his witness to establish these asserted violations of Section 8(a)(1).

LaNore[8] testified that he was an active supporter of the Union and had attended union meetings to get information about the Union but that he noticed, after he started attending the meetings, a supervisor assigned to the west side building, John Zaagman, appeared to him to be in his east side building quite a bit more often; this was also true as to the other third-shift supervisors, Tom Veihl and Leslie James (Bud) Gould, whom LaNore thought were "quite excessively" in his work area.[9]

a. LaNore's first encounter with Zaagman

Turning to the events of August 29, LaNore stated that while on his first break,[10] he had posted a notice of an upcoming union meeting on the employees' bulletin board in one of the two employee breakrooms. The notice contained the time and date of the meeting and advised that the employees owed it to themselves to see what the other side of the story was. According to LaNore, he went back to the breakroom on his second break of the day and noticed that his posting was no longer on the board. LaNore then proceeded to a nearby area (the shipping area), retrieved a piece of paper from the recycle bin, and returned to the breakroom to draft another notice for posting. While writing the notice, Zaagman and Veihl came into the breakroom and walked up to him, one on each side, whereupon Zaagman reached under his (LaNore's) arms, took the paper, and wadded it up. According to LaNore, Zaagman told him he will not write about the Union on company property, on company time, and that LaNore could not post anything about the Union on the bulletin board.[11]

According to LaNore, he told Zaagman that he was permitted to post the notice, to which Zaagman responded that he was not. According to LaNore, Zaagman looked to Veihl and said you are my witness (to this) and Veihl replied in the affirmative.[12] Then, both Zaagman and Veihl left the room while LaNore remained on break and then returned to his duties. LaNore recalls telling Zaagman and Veihl that he was on break. However, LaNore admitted that he was not eating; he just had pen and paper before him.

The Respondent called John Zaagman[13] regarding his encounter with LaNore on August 29. According to Zaagman, while his normal supervisory duties and responsibilities are on the west side of the plant, he was on the east side on August 29 checking on Tom Veihl, a relatively new third-shift supervisor. While conversing with Veihl, Zaagman observed LaNore, whom he has on occasion directly supervised, go into the shipping area around 4:50 to 4:55 a.m., in his view, wandering around apparently looking for something. LaNore then left the shipping area with some paper in his hand and headed toward the stairway to the employees' breakroom. According to Zaagman, LaNore had no responsibilities that would involve his being in the shipping area[14] and he and Veihl together were "wondering [aloud] what LaNore was up to"; he decided to follow LaNore.[15] The two followed LaNore to the lunchroom where they observed him seated at the table writing with a red marker pen. However, as he approached, LaNore flipped the sheet over so that he saw "Johnson letters" on the paper. Zaagman testified that he told LaNore that the sheet was company property and asked, "[w]hat has he got." LaNore then turned the paper over and Zaagman saw that he was writing a union notice. Zaagman stated he then asked LaNore for the paper, and LaNore slid it over to him. According to Zaagman, he discovered that the paper indeed was a company shipping form and, on the obverse side, LaNore had started to write about a union meeting.[16] Zaagman stated that he told LaNore

efforts during this period as well as LaNore's sympathies for and involvement with the union cause.

[7] These incidents will be discussed in what I have determined is their chronological order and, therefore, contrary to their order of presentation in the complaint.

[8] LaNore is currently employed by the Respondent and has been so employed for about 5-1/2 years. He has been a third-shift inspector assigned to the Latimer Building's cell 8 for the last year and a half. His duties and responsibilities include basically inspecting and approving the first parts produced by a technician/machine operator and then checking and approving all parts produced by the operator.

[9] According to LaNore, Veihl and Gould seemed to be frequenting his area several times throughout his shift and this continued until the instant charges were filed, after which the two did not seem to hang around his area quite as much.

[10] LaNore testified that his normal break periods were 12:30 a.m. for 10 minutes, 3 a.m. for 15 minutes, and 5 a.m. for 10 minutes. LaNore said that he follows this pattern about 75 percent of his time but that he is allowed some flexibility in his break schedule and is not required by the Respondent to take a break at any specific time.

[11] LaNore testified that the employees' bulletin board was used by the employees to place various nonwork-related notices such as car, boat, and trailer sales, and daycare services.

[12] According to LaNore, a woman who worked for the canteen vendor was present during his encounter with Zaagman and Veihl. However, he did not discuss this matter with her. The vendor employee did not testify at the hearing.

[13] Zaagman stated that he was a third-shift coordinator/supervisor and has held the position for about 8 years; he is responsible for the Respondent's cells 4, 5, 6, and 17, all of which are located on the west side of the Respondent's facility.

[14] According to Zaagman, the Respondent does not perform any shipping functions on the third shift.

[15] Zaagman admitted that he had been told previously by admitted supervisor Roger Starring to keep an eye on LaNore because Starring had received complaints about LaNore; Zaagman did not know whether Veihl had been so instructed.

[16] Zaagman identified R. Exh. 1 as the sheet of paper he obtained from LaNore. It is to be noted that the document does not appear to

that he was going to take the paper and the matter to human resources.

According to Zaagman, who admitted that he did all of the talking to LaNore, LaNore told him he had the right to write up the notice. Zaagman then responded to LaNore that he did not know this to be true, but that he would check with the Company's human resources department. According to Zaagman, LaNore did not ever state that he was on break and, in fact, LaNore did not appear to be on break. Zaagman also conceded that he did not ask whether LaNore was on break.[17]

Zaagman admitted that out of ignorance of the law he had taken down union postings from the breakroom bulletin boards that employees were permitted by the Company to use for personal notices and sales. However, he discontinued this practice when he was informed that employees could legally post notices on these bulletin boards, one of which was located in the breakroom where he confronted LaNore. According to Zaagman, he knew nothing about LaNore's union activities or sympathies prior to the lunchroom incident.[18]

Veihl, then a third-shift coordinator of only 3 to 5 weeks, testified about his involvement in the August 29 incident and for all intents and purposes corroborated Zaagman's testimony, including their first observation of LaNore in the shipping area, his leaving there with a piece of paper and proceeding to the breakroom, and being discovered writing a union meeting notice on company paper.[19]

Veihl also admitted that neither he nor Zaagman asked whether LaNore was on break and conceded that in spite of LaNore's not having his usual cooler and newspaper, he could well have been on break at the time. Veihl also stated that he had not been asked to watch LaNore by anyone in management. However, he thought it odd that LaNore was coming out of the shipping area, an area he had no reason to be in, that actually was off limits, and then going to the breakroom without his normal lunch items. However, Veihl stated that in spite of his concerns, neither he nor Zaagman ever in this encounter inquired of LaNore why he was in the off-limits shipping area. In fact, according to Veihl, he did not speak to LaNore at all; Zaagman did all the talking during the 2 to 3 minute conversation.

b. LaNore's second encounter with Zaagman

Later on, as LaNore's shift was ending around 6 a.m. on August 29, LaNore stated that Zaagman stopped him on the work floor. According to LaNore, Zaagman told him that as of 6 a.m., when the human resources (director) arrives, he (Zaagman) was going to report the breakroom incident and have him (LaNore) suspended. LaNore stated that he told Zaagman he could not do that and the two argued this point back and forth, with LaNore's telling Zaagman that he, as an employee, could post notices on the employees' bulletin board located in the breakroom but not on the shop floor, and Zaagman's insisting he (employees) could not post anything on company bulletin boards. LaNore said that Zaagman ultimately asked him where he got this information and if this was in writing. LaNore stated that he showed Zaagman a copy of a card published by the Union setting out an employee's organizing rights[20] and Zaagman took the card and walked away.

Zaagman acknowledged that after the breakroom discussion with LaNore, as he was returning to the west side of the facility, LaNore approached him and gave him (what he described as) "a bunch of copies of his rights, his labor rights." (Tr. 276.) Zaagman stated that he did not read the materials but told LaNore that he would give the materials to human resources and the conversation ended.[21] According to Zaagman, he did not discipline LaNore, or threaten to discipline him, or even recommend that he be disciplined in this encounter.

2. The August 29, 2000 incident involving LaNore and Tom Jasick[22]

LaNore testified that after the second encounter with Zaagman, while working at a machine, he was approached by Jasick, the director of manufacturing, and another third-shift coordinator, Leslie (Bud) Gould. According to LaNore, Jasick said that he had been told that he (LaNore) had been observed writing about the Union on company property and queried whether this information was factual. LaNore told Jasick that he did not understand Jasick's question. Jasick thereupon repeated the question and, once more, LaNore responded that he did not understand the question. Jasick then said, "understand this, the floor he (LaNore) was standing on, the tables used in the breakroom, everything in the building, except the clothes on LaNore's back, belongs to the Company." LaNore responded by saying he understood that the case he carried belongs to him (LaNore) as well as the items in it. Further, that if he (LaNore) were to pick up scrap recyclable paper, the paper belongs to him (LaNore)—that to him the paper was garbage that he was free to use. According to LaNore, Jasick then declared that the recyclable paper was company property that LaNore picked up from the garbage and on which he wrote about the Union on company time and on company paper. Then Jasick asked again

have been crumpled or wadded up. According to Zaagman, he could not remember if he folded the document in question but he recalled that Leslie Bud Gould took it to human resources after Zaagman explained to him the circumstances of his obtaining the paper.

[17] Zaagman testified that he concluded that LaNore definitely was not on break because there were no other workers in the break room and LaNore did not have his usual lunch cooler, a drink, or newspaper. Zaagman said he did not know whether LaNore was permitted a flexible break schedule.

[18] I note that at this juncture, Zaagman's testimony regarding his knowledge of LaNore's union activities was elicited by me and that Zaagman appeared less assured and was hesitant and somewhat evasive in his response.

[19] It should be noted that Veihl admitted that he discussed his prospective hearing testimony, as well as what was or had been transpiring in the trial, with the Respondent's human resources director, Curtis Evans, while awaiting his turn to testify; this in the face of a sequestration order. However, it should be further noted that Zaagman testified after Veihl.

[20] See GC Exh. 2, a copy of the type of union card LaNore said that he provided Zaagman; the card is yellow/orange.

[21] According to Zaagman, this encounter took place about 10–15 minutes after the break room incident. Zaagman admitted that the materials included an orange card with a listing of employee rights on it.

[22] Jasick's name as it appears in the complaint was spelled Jazek; this is a misspelling.

whether he wrote about the Union. According to LaNore, he responded that he did not get the paper from the garbage—rather the recycle area. Jasick then asked whether he had written about the Union on recyclable paper; LaNore answered that he had. Jasick then said well, we finally understand something and that LaNore would be getting a telephone call some time later that day and he informed him as to what action may be taken by management. According to LaNore, management took no further action against him regarding this matter.

Jasick[23] testified at the hearing and acknowledged that he spoke with LaNore but just after 7 a.m. on August 29. According to Jasick, he had been left a vague telephone message indicating that LaNore and some supervisor had had a discussion about LaNore's posting something. Jasick stated that he wanted LaNore's input as to what had transpired. However, before speaking to LaNore, he spoke to Veihl about the matter and went to cell 8 and spoke to Gould who told him of Zaagman's and Veihl's encounter with LaNore. Then he, along with Gould (LaNore's supervisor), met with LaNore in cell 8 and dealt with the matter. Jasick stated that he led the discussion[24] and asked LaNore to confirm that he was seen producing a notice of a union meeting that he planned to post using company-owned materials during work hours. According to Jasick, LaNore simply stared at him, which led him to repeat the question. LaNore then responded by saying he did not understand what Jasick was talking about, leading Jasick to repeat his question a third time. Again, according to Jasick, LaNore simply stared at him and then, after a long pause, asked what did Jasick mean by "company materials." Jasick responded that he meant the paper on which LaNore wrote the posting. Jasick stated that LaNore responded that the paper he used was in the scrap barrel and he did not consider this company material.

Jasick stated that he then told LaNore that the ground he was standing on, the machinery, the podium he was leaning against, and even a piece of paper in a wastepaper basket were all company material. Jasick told LaNore that he was not to use company material or company assets during work hours[25] to generate and post notices. According to Jasick, LaNore said that he understood. Jasick stated that the conversation ended, but admitted that he told LaNore that he would get back with him if management decided to take any action because of the incident.[26]

Jasick acknowledged that if LaNore himself had purchased the paper on which he wrote the notice and posted the notice on his break, nothing would have been said to him.

3. The September 15, 2000 incident between Robert (Bob) McFalls[27] and employees Julian Espinoza and Jerome Switzer

Julian Espinoza testified that he has been employed by the Respondent for about 2 years as a utility-maintenance worker. Espinoza related a conversation he had with Bob McFalls on September 15, 2000. According to Espinoza on that day, he and a fellow employee, Jerome (Jay) Switzer, were walking through the dock area of the plant on their way to cell 3 to see Felix Adami, a cell leader, to give him a resume for a friend in search of work. En route, he and Switzer were stopped and greeted by another utility worker who inquired about the Union. Espinoza stated that the conversation with this worker included some small-talk, where he could get general information about the Union and the place of a union meeting, including directions to get to the meeting site.[28] Espinoza admitted that at the time of this conversation, neither he, Switzer, nor the utility worker were on break—the utility worker was in fact about to get into his hi-lo machine when he stopped the two—rather, he and Switzer were on their way to work on the roof at about 7:10 a.m. According to Espinoza, as the conversation ended, an unidentified management employee walked by. Then, about 10 minutes later, he and Switzer were called to the facility conference room where supervisor Robert (Bob) McFalls and Espinoza's immediate supervisor, Don Kowitz, were in attendance.

According to Espinoza, McFalls did all of the talking and began the meeting by asking what he and Switzer were doing; were they talking about the Union to other employees; and were they trying to recruit the employees. When both he and Switzer responded that they were not,[29] McFalls then said that another manager had informed him that he (Espinoza) had a folder and was handing out (union) fliers. Espinoza told McFalls that he was not handing out fliers, that the folder contained a friend's resume and offered to allow McFalls to examine the folder. According to Espinoza, McFalls said there was going to be an investigation, and if this (conduct) continued, there would be further disciplinary action which could lead to discharge. According to Espinoza, McFalls said, "basically we couldn't talk about the Union if we were pro-Union and only if we were to do it so—it could only be on our breaks or off the

[23] Jasick has been employed by the Company for about 30 years. As director of manufacturing, his duties and responsibilities include overall supervision of all manufacturing, maintenance, toolroom operations of the entire plant, and the 422 hourly employees.

[24] Gould testified at the hearing but was not examined by either of the parties regarding Jasick's and LaNore's conversation of August 29.

[25] According to Jasick, he never asked whether LaNore was on break and LaNore never said that he was on break at the time he was observed preparing the notice; nor did any of the reporting supervisors so indicate. Additionally, Jasick stated that LaNore never mentioned anything about using recyclable paper which the Respondent does keep in recycle bins and is worth in his estimate 25 cents per sheet.

[26] Jasick's actual testimony on this point is as follows: "I said I don't know what is going to come of this David, and I said something about a phone call, I don't quite remember that but that is how I see David said I told him I was going to call him, I said we will get back with you if anything is to come of this and nothing came of it." (Tr. 198.)

[27] In the complaint, McFalls is referred to as Bob McFall. At the hearing, he stated that his name was Robert McFalls.

[28] Espinoza stated that the utility worker did not specifically use the term "union" in this conversation. However, Espinoza noted that they were certainly talking about the Union regarding the worker's need for information and the whereabouts of the meeting.

[29] Espinoza testified that he told McFalls that actually he and Switzer were not specifically talking about the Union but were providing information about where the meeting was and where the union representatives were located.

facilities." (Tr. 44.)[30] According to Espinoza, he was clearly aware that the Company maintained a general rule against employees talking about nonwork-related topics while working. However, as far as he was concerned, he and Switzer were not conducting a meeting or asking the utility worker to join the Union. In his view, he believed that McFalls was accusing him—wrongfully— of distributing union literature.

Switzer[31] testified that he, along with Espinoza, was called to a meeting with McFalls and Kowitz in the conference room of Kowitz's office in mid-September 2000; McFalls led the discussion that followed. According to Switzer, McFalls said we hear you are handing out union literature. Switzer said that he and Espinoza denied this. Switzer said he and Espinoza explained that they were on their way to see the cell 3 boss to give him resumes, when a coworker, Mike Collins, who was working in the shipping area initiated a discussion which included the Union.[32] Switzer stated that both he and Espinoza told McFalls that the folder in Espinoza's hand contained resumes to be given to cell 3 leader, Adami, for one of Espinoza's friends. According to Switzer, McFalls said that management was not a "Gestapo" and that he (McFalls) did not really care if he (they) stopped and talked someone. Switzer stated that McFalls reminded them that they were on working (nonbreak) time as was Collins and that they were talking about the Union and not about work-related topics. According to Switzer, he did not take issue with McFalls on that score. However, Switzer felt they were being accused of distributing union literature and this they denied. McFalls, nevertheless, told them that they could talk about the Union or hand out literature during break or during lunch but that talking about the Union during work hours had to stop.[33]

The Respondent called Robert McFalls, who identified himself as the Respondent's manufacturing support leader whose supervisory responsibilities include the maintenance and toolroom department for the last 1-1/2 years. McFalls acknowledged that on September 15, 2000, he had a discussion with Switzer and Espinoza, two maintenance department workers supervised directly by Kowitz who, in turn, reports to him. According to McFalls, he had received a complaint from cell 3 leader, Bill Miller, at an 8 a.m. meeting that day that Switzer and Espinoza were disturbing and disrupting his workers in cell 3; Miller said that one of the two had an envelope and was passing out some paperwork. Miller told him that he (Miller) did not know what Espinoza and Switzer were doing but he wanted them out of his cell because they were interfering with several of the cell workers in the performance of their duties, i.e., working on their machines and performing other tasks.[34] Miller said to him that he (Miller) wanted the two to either do their jobs or stay out of his cell. McFalls stated he then consulted with Espinoza and Switzer's supervisor, Kowitz, who told him that the two did indeed have maintenance jobs on that side of the building on the day in question.

After speaking with Miller, McFalls asked Kowitz to bring the two to the maintenance department conference room where the four of them met. McFalls, admitting that he led the discussion, said he told Switzer and Espinoza that he was disturbed and concerned to hear that two of his workers were not doing their jobs and were disrupting other workers and that that was the reason for the meeting.

McFalls said he told the two that Miller had seen Espinoza with a manila envelope and he (McFalls) was concerned that the meeting and the disruption on the cell floor was regarding the Union and union-related discussions. According to McFalls, he then made it perfectly clear that he (McFalls) did not have the right to ask them if they are engaging in any kind of union activity but "bottom line is [if] you are on the clock, you are working, you are not on break, and that you need to get back to work." (Tr. 171.) McFalls stated that he specifically advised the two that he was not inquiring as to what they were talking about but that it (the topic) was not work related. According to McFalls, Espinoza asked whether employees could talk about the Union, and he responded that you can talk about anything at breaktimes and lunch, after 3 p.m., the end of their shift; but while on the clock, while they were working, he expected them to work. McFalls emphatically denied that there were any company rules prohibiting employees from talking among themselves while working; that employees passing one another in the aisles could discuss sports or other topics if they chose; and that the Company has not clamped down on talking while they are working. However, according to McFalls, employees are not free to disrupt or disturb other workers. McFalls acknowledged that the employees freely talk about current events and the Union was a matter of topicality for a time at the plant, but he has never stopped employees from talking about any matter. However, based on Miller's complaint that Switzer and Espinoza were creating a disturbance and impeding work, he decided to speak with them.

McFalls stated that the matter of the manila folders and Espinoza's and Switzer's distribution of paper was raised by him in the meetings and Espinoza admitted that he had a manila envelope but that it contained a resume he planned to give to someone. According to McFalls, he told Espinoza that he did not care what was in the folder but "it" needs to stop, that he could not distribute literature (of any kind) during worktime. McFalls also acknowledged that Espinoza volunteered to get

[30] Espinoza readily acknowledged that he and Switzer were not on break when they conversed with the utility worker.

[31] Switzer is currently a preventive maintenance technician and has been employed by the Respondent for over 14 years.

[32] Switzer essentially corroborated Espinoza's testimony that the three workers spoke of a (union) meeting that weekend, Collins' interest in attending, and their telling him he was welcome to attend. Collins did not testify at the hearing.

[33] Switzer stated that he did not know of any company rule prohibiting talking to one another on the job.

[34] According to McFalls, Miller, who did not testify at the hearing, mentioned to him that he thought that Switzer and Espinoza were involved in union activity but was not absolutely sure they were talking about the Union. Miller's assumption of union activity was based on an unidentified cell 3 worker's statement that the materials were union related. McFalls stated that Miller did not himself see Switzer and Espinoza passing anything out. According to McFalls, Miller's main concern seemed to be disruption of other workers.

the envelope, but he advised Espinoza that that was not necessary, as he believed him.

4. The October 4, 2000 incident between employee Jennifer Minarovic and Jasick

Jennifer Minarovic, currently employed by the Respondent as a technician[35] working the first shift (7 a.m. to 3 p.m.), testified about a conversation she had with Jasick on October 4, while working at her machine. According to Minarovic, Jasick, with whom she has conversed on prior occasions, approached her and initiated a conversation by asking how she was doing. Jasick then said to her that he was wondering how "we" could improve things in the cell and how she felt about the Union. According to Minarovic, Jasick mentioned also in this conversation that her name was not checked off on a list he had. Minarovic stated that the questioning upset her but she did respond and expressed her view that the Company did not promote fairly, that there were persons whom she felt did not deserve a promotion and others, including herself, who did but were ignored ("blown off"). Minarovic went on to explain that she had been complaining about the promotion policy for about a year, mainly in an informal way. According to Minarovic, she did not, however, respond to Jasick's question regarding the Union about which she had never previously expressed any position one way or the other to anyone.[36] Jasick, in response to her concerns about the promotions, told her he would get in touch with her boss about it.

According to Minarovic, Jasick's conversations took place in the presence of about 20 other employees with the nearest one about 10 to 12 feet away; Jasick did not approach or speak to any other employees during this time.[37]

Minarovic explained that she was not particularly concerned about Jasick's question about improving things around the plant because the Company, in her view, was always trying to improve, changes were always ongoing. However, when Jasick "tacked on" the question about the Union (and her name not being on a list), she felt uncomfortable and upset because this was an unusual question and her father, brother, and a cousin who worked at the plant had been active on behalf of the Union. According to Minarovic, she did not communicate her feelings to Jasick but felt compelled to record the incident. So immediately after the conversation with Jasick, she sat down at her worktable and ripped off a piece of paper of the type she uses to record part numbers and recorded the incident.[38]

Jasick testified that he knew Minarovic and that he has had many—around 10—conversations with her and, although he could not positively say he spoke to her on October 4, he may have and probably did approach her and ask how she was doing. Jasick also conceded that he could have inquired of her regarding her feelings about changes or improvements in the cell because the Company had only recently made some managerial changes in cell 5—replaced one manager and installed a new one—about a month before. Thus, according to Jasick, he was only following his usual practice of following up on a move like this with the employees to get a pulse or heartbeat of how the cell was functioning. Jasick acknowledged that Minarovic had concerns about promotion, hers in particular, as did other employees. Therefore, she may have raised this subject on October 4. Jasick, however, stated that he could not recall a conversation on that day in which her name being on a list was mentioned. Jasick could likewise not recall conversing with Minarovic in which either she or he injected the word "union." However, Jasick did acknowledge that it was possible he did talk about the Union during a conversation with her. (Tr. 200.)

5. The Respondent's alleged campaign of harassment of LaNore after August 29, 2000

LaNore testified that after the August 29 incidents, he experienced additional encounters with management representatives. LaNore related that on September 1, as he was coming off break, he walked past Gould and Veihl who were standing near his work station. Gould then yelled out his name and told him to come over. LaNore went over to Gould who then told him that he (LaNore) had been observed coming out of the processing room[39] and was this indeed a fact. LaNore denied the conversation. Gould then repeated the question and LaNore stated that he again told him no and the conversation ended. However, later that day, while at his machine, LaNore heard his name announced over the public address system instructing him to page Gould. Gould asked him to meet at his work station and, once there, Gould and he then proceeded to the engineering room, a dimly lit room with partitions, and out from one of which stepped Veihl and supervisor Mike Smith. According to LaNore, Gould then said he was going to ask him once again whether he had been in the processing room and LaNore said that he had already told him no. Smith then said in a loud voice that he (LaNore) was lying and, in spite of LaNore's protests, continued to call him a liar. Smith insisted that he had seen him leaving the processing room. Gould then said he would talk to a female worker in cell 3 and investigate but, in the

[35] Minarovic currently works in cell 5 as a machinist in which capacity she manufactures airplane parts; she has been employed by the Company for about 5 years.

[36] Minarovic stated that over the 5 years she has worked at the Company, she and Jasick have conversed two or three times, including small-talk, but mainly about her problems with the cold temperature at which the plant is maintained. However, she has also expressed her concerns about what she viewed as the Company's unfair promotion practices, a point she has raised with her s

[37] Regarding her support of the Union, Minarovic claimed she was "quiet" about it, and thus wore no buttons and other paraphernalia.

[38] Minarovic first mentioned the recorded notes at the hearing on January 30; however, on that date, she did not have the document with her. She offered to provide it at that time. (I note that time would not have permitted her to go to her home and return the document that day.) When the hearing resumed on February 21, 2001, the General Counsel called her in his rebuttal case, at which she produced the notes that are contained in G. C. Exh. 4. According to Minarovic, it was her practice to document discussions when she felt uncomfortable but had never documented any other conversations; this was the only one she had ever done. (Tr. 26–27.)

[39] According to LaNore, the processing room contains files of procedures used to manufacture parts and during this time was where his former supervisor, Rosemary McDonald, officed. The copy machine was located there also, and LaNore stated that the room was not off limits to inspectors as far as he knew because he was allowed to use the copier, and he was also instructed to leave notices on McDonald's desk.

meantime, ordered LaNore to stay out of the processing room and to call management and get a key if he needed access to it. LaNore said he agreed to do this.

LaNore related another encounter with Gould on September 8. According to LaNore, again while coming off of break, Gould stopped him and said that he had been looking for LaNore for 45 minutes. LaNore responded that he had been on break and had been performing machine checks. Gould's response was that he had not seen him. LaNore stated that he told Gould to check a technician's (Olivia) machine to verify his story and Gould said he would.

Later that same day, LaNore stated that he had a conversation with Roger Starring, a quality control supervisor. According to LaNore, Starring approached him as LaNore was finishing his shift and told him that after the Labor Day break, he and LaNore were going to have a meeting. After the holiday, LaNore and Starring met and Starring told him that he (Starring) was not aware whether LaNore was involved with the Union but that matter was LaNore's personal business. According to LaNore, Starring then volunteered that he did not want any part of the Union, that on a personal level, he did not like unions, but again (the choice of a union) was LaNore's prerogative. Starring also stated that he knew that LaNore had been caught in the break room writing a union notice by Zaagman and Veihl. LaNore stated that Starring told him that at least 5 hourly coworkers (not identified by Starring) had complained to Zaagman about him (LaNore) and his being away from his work station for 2 to 3 hours. In response, LaNore stated that he did not know what Zaagman was talking about, that he did not set aside certain times to be away from his work station or simply not be there for 2 to 3 hours. According to LaNore, Starring advised him to watch his back because they were watching him. LaNore stated that prior to September 8, he had not been disciplined specifically for not being at his work station and, in fact, was not aware of any complaints. Moreover, Starring had never issued any disciplines to him previously and he had never directly received any complaints from fellow workers about being away from his work station.

Roger Starring testified at the hearing. Starring identified himself as the Respondent's quality control leader, a position he assumed in early August 2000.[40] According to Starring, his duties includes supervision of about 30 hourly inspectors who are more directly supervised by the various shift supervisors and team leaders, but who ultimately are accountable and report to him.

Starring stated that he knew LaNore as a third-shift inspector. According to Starring, during his first week in his new position, Gould, a third-shift supervisor, complained about LaNore on one occasion being slow to respond to another inspector who had requested his assistance; Starring confirmed this with the other inspector. Gould also related to Starring that LaNore, during the past year, reportedly wandered the plant picking up soda cans from trash cans and the cafeterias. Additionally, on about August 24, two of LaNore's fellow inspectors complained that he (LaNore) had been unaccountably absent from his work station onAugust 21 for an extended period when they were working overtime on LaNore's shift.[41] Several days later, Starring testified that he was approached by the same two supervisors and several other employees in the lunchroom, and all seemed to be in agreement that LaNore's absence from his work station on August 21 was not an isolated act.

According to Starring, at some point, he decided that because he was newly installed in the quality control position, he needed to corroborate the complaints about LaNore. Also, since Gould had already reported similar behavior on LaNore's part on August 28, he asked Gould to determine if LaNore was indeed missing within the first 45 minutes to 1 hour of his shift as reported to him; he also asked Gould to pass his request to observe LaNore along to third-shift supervisor Veihl.[42] According to Starring, he instructed Gould to observe only and report to him, but take no action. Gould later reported that LaNore was actually missing from his work station for nearly an hour.

As a result of the complaints about LaNore's behavior, Starring decided to convene a meeting with LaNore, the purpose of which was to make him aware of the complaints and to convey to LaNore Starring's expectations regarding his job. Starring stated that he and LaNore met in his (Starring's) office on September 8. According to Starring, he first made clear that the meeting was non-disciplinary in nature and then explained to LaNore that he expected him to stay primarily in his work area unless otherwise required to work in another area of the plant, and not to wander the plant. Starring also told LaNore that he (Starring) did not know what LaNore's union persuasions were "but that he really did not care."[43] Starring denied that he told LaNore "to watch his back" in those words but that he mentioned that, based on the reports given to him by supervisors and his fellow workers, he was viewed as lazy, unduly absent from his work station, and basically not pulling his weight. Starring said he advised LaNore that if he stayed in his work area, he would be less likely to attract the attention of supervisors and give coworkers a negative impression of him. Starring viewed his conversation as providing LaNore some friendly advice, and certainly not discipline or a warning. He told LaNore to be vigilant because, from the point of view of a new manager, LaNore's behavior made him stand out.

The Respondent called three currently employed inspectors—Jennifer Pell, Paula Rowe, and Kathleen Dye—to testify in this matter.

Pell, a second-shift supervisor employed for the past 3 or more years in cell 8, testified that in August 2000, she complained to Roger Starring about LaNore whom she knows to be a third-shift supervisor. According to Pell, she advised Starring

[40] Starring has been employed by the Company since June 1984 and was a project engineer until he was promoted to quality control leader position in August 2000.

[41] Starring identified the inspectors as Jennifer Pell and Kathleen Dye who testified at the hearing.

[42] Starring said he never talked personally with Veihl on the morning he asked that LaNore be watched.

[43] Starring acknowledged that Zaagman and Veihl had reported to him that they had observed LaNore go into the lunchroom and attempt to put up a union notice on the bulletin board on August 29. Starring stated that prior to August 29, he did not know personally of LaNore's involvement with or support for or against the Union.

that LaNore was absent from his assignment which caused her to work 2 hours of overtime. Pell stated that she had complained about similar behavior on LaNore's part to other inspectors who talked among themselves about the problem. Pell admitted that she was asked by Starring and Human Resources Director Evans to write up her complaint and she did so voluntarily.

Paula Rowe, a first-shift control inspector specialist for the last 15-1/2 years, who has as her primary responsibility cell 8, testified that she knows LaNore whose third shift overlaps occasionally with hers. Rowe stated that in August 2000, shortly after Starring assumed his quality control position, she complained to him about LaNore's being absent for over an hour from his work station. According to Rowe, Starring, on this occasion, had approached her and generally asked if she had any concerns and she related her complaints about LaNore's absences and some other more generalized concerns about his work behavior, including his recording improper serial numbers and his leaving tools with parts. Rowe stated that LaNore's absences caused her to tell Starring once that she would only work overtime if management made sure that LaNore was on duty.[44]

Rowe also acknowledged that she was asked by Starring to put her complaint in writing because, as he put it, there was some "court stuff" that was to take place.

Kathleen Dye, employed by the Respondent for over 2 years, testified that she is currently employed as a general inspector on the second shift; she knows LaNore as the third-shift supervisor for cell 8 where she works. Dye recalled being called to a meeting in Starring's office about late October or November 2000; Jennifer Pell, Curtis Evans, and Starring were present. According to Dye, Evans wanted Pell and her to make a written statement about a complaint that they had previously made to Starring about LaNore's being absent from his work area. According to Dye, she questioned Evans about the request and was told of a lawsuit involving LaNore and an attempt to organize a union at the Company; Evans wanted to document their complaints. Dye stated that she asked Evans what LaNore's absence from his work station had to do with the lawsuit and union business. According to Dye, Evans did not really answer her queries but, nonetheless, wanted her and Pell's statements in their own words.[45] Dye said she refused to give a written statement because she knew Gould was involved and she was not going to give a statement to save him from what she viewed as a harassment charge.

Veihl testified about the processing room incident with LaNore. According to Veihl, one of the cell 3 engineers, Mike Smith, reported that LaNore was seen coming out of the processing department, an area that Veihl supervised but was unstaffed during the third shift. Once notified, Veihl stated he contacted Gould and discussed the matter with him. Gould then contacted LaNore and asked to speak with him in the engineering department. According to Veihl, he, Gould, and Smith met with LaNore, and Gould asked whether LaNore had been in the processing room. LaNore denied this, whereupon Smith countered that LaNore had been observed there. According to Veihl, Gould ultimately told LaNore that if he had been in the processing room, not to go in there again; if he had not been in the room (as he claimed), then he now knew that the room was off limits.[46]

Veihl acknowledged that Rosemary McDonald's desk was in the processing department and that she was at one time a supervisor of the inspectors.

IV. CONTENTION OF THE PARTIES

The General Counsel argues regarding the breakroom incident that the Respondent violated the Act on August 29 when its agents removed union literature from the employees' bulletin board, prohibited LaNore from posting a union meeting notice, and threatened him with discipline for engaging in union activity.

Noting that the underlying facts of the breakroom incident generally are not disputed, the Respondent argues nonetheless, that LaNore's version of the events is not worthy of belief. On the contrary, it contends that Veihl's and Zaagman's version of the encounter testified that they were simply watching or keeping an eye on LaNore, an employee who was widely thought of as a waster of time. Therefore, when LaNore was observed going to the lunchroom after being seen going to a room in which he had no business, with paper in hand, he roused their suspicions that he was not on break. The Respondent asserts it was acting within its rights to follow him to the lunchroom and, when Zaagman discovered LaNore writing with company-owned paper, he reasonably formed the belief that LaNore was creating a union meeting notice during worktime—a violation of the Company's solicitation rules—and, moreover, properly informed him that he could not write the notice on company time, using company property. On balance, the Respondent argues that LaNore was using company property to create union postings during worktime and Zaagman merely sought to clarify the parameters of the Company's solicitation-distribution policy with LaNore. This, it asserts, is not violative of Section 8(a)(1).[47]

The General Counsel similarly argues that Jasick's August 29 conversation with LaNore was violative of the Act because, in the course of the encounter, Jasick promulgated an overly broad solicitation rule that disparately prohibited employees from posting union literature on the employees' bulletin boards and coupled that unlawful conduct with a threat to discipline LaNore for posting or attempting to post the union notice. The General Counsel submits that Jasick's statements about the use

[44] Rowe also acknowledged that LaNore was not at his work station on one occasion only. She, on balance, stated she had no problems with LaNore.

[45] Dye stated that Starring was her supervisor and she had complained about LaNore 2–3 months prior to this meeting. At that time, she told Starring that she could not locate LaNore and needed to give him some information before she left for the day. According to LaNore, she only wanted to make Starring aware of the problem and Starring said he would speak to LaNore.

[46] It is noteworthy that Gould did not testify about his part in the processing room incident.

[47] The Respondent also submits, citing *Robert F. Kennedy Medical Center*, 332 NLRB 1536 (2000), that the Board has not definitely held that the use of an employer's materials by an employee to engage in union activities is protected by Sec. 7 of the Act.

of company property—here a piece of scrap paper—is a clear overreaction and simply underscores the Respondent's animus against the Union. Furthermore, he submits that the Respondent's ownership of the scrap paper should not be used to deny employees their right to engage in union activity. He submits that LaNore's use of a simple piece 8–1\2'' x 11'' scrap paper, worth possibly 25 cents, to inform employees of an upcoming union meeting became the basis of a lecture and a threat of possible discipline and in context was unjustified and, more likely than not, was designed by the Respondent to prevent LaNore and other employees from engaging in union activities.

The Respondent contends that Jasick had received a report from certain supervisors that LaNore was using company materials to create a union posting during worktime and essentially sought to confirm these reports with LaNore and to explain the Company's position. The Respondent submits that LaNore's coyish responses regarding the report led to the continued questioning and the explanation by Jasick of how the Company viewed the use of company property. The Respondent argues that it may lawfully remind employees of company rules and regulations regarding solicitation and distribution and that is precisely what Jasick was doing in his conversation with LaNore on August 29.

Regarding the incident involving Espinoza and Switzer on September 15, the General Counsel contends, in essence, that the Respondent violated the Act when it called the two men into Kowitz's office and McFalls told them they could only discuss the Union during their breaks, at lunch, or after work, but did not prohibit them from discussing other subjects unrelated to work. The General Counsel further contends that because these rules were given to the two employees in the context of the Respondent's albeit mistaken belief that the two were engaged in union activities—passing out literature—the statements by McFalls were particularly coercive. The General Counsel fundamentally claims that the Respondent promulgated an overly broad rule because it failed to define the areas of permissible conduct in a clear way to the employees and disparately instructed them only to discuss the Union on breaks at lunch or after 3 p.m.

The Respondent asserts that McFalls, having received a report that Espinoza and Switzer were disrupting other working employees, lawfully told the men that he did not care about their union statements but that they were not allowed to disrupt others in the performance of their jobs; that they were to restrict their union activities to periods before work, at lunch, or after work, and that he expected them to be working while on working time, and not wasting time. The Respondent asserts this conduct, on its part, poses no violation of the Act.

The General Counsel contends that Jasick's unsolicited questioning of Minarovic about how she felt about the Union, coupled with his solicitations as to how she felt about improving the cell and his statement that her name was not on a list, in effect, were a coercive interrogation with an implied promise to remedy any grievances she might have with management. The Respondent, on the other hand, contends that Jasick, as was its practice, simply asked a subordinate with a history of work place issues how she was doing; that he merely asked her about the state of things in her area. The Respondent further asserts that even if one were to assume that Jasick did ask Minarovic what she thought of the union situation, he only did so in a nonthreatening manner as part of a friendly conversation on the shop floor.

Finally, the General Counsel essentially contends that from August 29 through September 8, LaNore was subjected to a campaign or pattern of harassment that included his being more closely monitored and his movements more restricted from the Respondent's management because of his union activities. The Respondent counters and argues that any attention given to LaNore was based on his "less than stellar" work habits and not because of his union activities. The Respondent submits that Roger Starring, new to his position, received before August 28 or 29 negative reports about LaNore from various supervisors and LaNore's fellow inspectors. Based on these reports, he asked on August 28 or 29, before learning of LaNore's union activities, that he be watched for behavior consistent with the reports of LaNore's wandering the plant or otherwise being away from his work station. Essentially, the Respondent contends that LaNore's later encounters with management and Starring's advice to him on September 8 stemmed not only from LaNore's behavior on August 29, but also his having developed a reputation for poor work habits. The Respondent submits that management was entirely justified from a legitimate business point of view to investigate these matters and confront him with its concerns. The Respondent submits that LaNore's perception of undue surveillance of his movements and activities derive from his unfounded and presumably hypersensitivity and not any campaign of harassment.[48]

V. THE APPLICABLE LEGAL PRINCIPLES

Section 7 of the Act (in pertinent part) provides that "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities." 29 U.S.C. § 157. Thus, employees have the right to, inter alia, support or oppose union representation and to participate or refrain from participating in an NLRB election campaign.

Section 8(a)(1) of the Act provides: "It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7." The test under Section 8(a)(1) does not turn on the employer's motive or whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which it may be reasonably said tends to interfere with the free exercise of employee rights under the Act. *Gissel Packing Co.*, 395

[48] The Respondent notes that the complaint allegation states that the campaign of harassment was directed against selected but unnamed employees, including LaNore, by repeatedly and more closely watching and restricting his movements. However, no evidence was adduced relative to other employees. Indeed, I note that the General Counsel does not mention in his brief other employees who may have been subject to harassment. I would conclude that to the extent there was any arguable evidence of a campaign or pattern of harassment on this record, it seems that LaNore was the only employee so targeted.

U.S. 575 (1969); *Almet, Inc.*, 305 NLRB 626 (1991); *American Freightways Co.*, 124 NLRB 146, 147 (1959). Thus, it is violative of the Act for the employer or its supervisors to engage in conduct, including speech, which is specifically intended to impede or discourage union involvement. *F. W. Woolworth Co.*, 310 NLRB 1197 (1993); *Williamhouse of California, Inc.*, 317 NLRB 699 (1995). The test of whether a statement or conduct would reasonably tend to coerce is an objective one, requiring an assessment of all the surrounding circumstances in which the statement is made as the conduct occurs. *Electrical Workers Local 6 (San Francisco Electrical Contractors)*, 318 NLRB 109 (1995). *Rossmore House*, 269 NLRB 116 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 706 F.2d 1006 (9th Cir. 1985). The Board has noted in this regard that the context of statements can supply meaning to otherwise ambiguous or misleading expressions if considered in isolation. *Debbie Reynolds Hotel*, 332 NLRB 466 (2000).

In the interest of maintaining production and work place discipline, employers can lawfully impose restrictions on work place communications among employees and, in fact, when justified by such factors or considerations, employers can prohibit all talking while employees are working. *Stone & Webster Engineering Corp.*, 220 NLRB 905 (1975); *Pilot Freight Carriers, Inc.*, 265 NLRB 129, 133 (1982).

However, a no-solicitation rule is unlawful if it unduly restricts the organization activities of employees during periods and in places where these activities do not interfere with the employer's operations. *Our Way, Inc.*, 268 NLRB 394 (1983); *Laidlaw Transit, Inc.*, 315 NLRB 79, 82 (1994), cited in *Adtranz, ABB Daimler-Benz*, 331 NLRB 291 (2000).

Therefore, a prohibition on communication among employees cannot be overly broad, so broad that it prohibits communication among employees during paid nonwork periods such as breaks and lunch breaks or during unpaid nonwork periods such as before or after work, so long as the employees are lawfully on the employer's premises. Such broad prohibitions are presumptively invalid. *St. John's Hospital*, 222 NLRB 1150 (1976). Said another way, employers may lawfully ban worktime solicitations when defined as not to include before or after regular working hours, lunchbreaks, and rest periods. *Sunland Construction Co.*, 309 NLRB 1224, 1238 (1992); and they may remind employees of existing rules or established policies regarding solicitation. *Bryant & Stratton Business Institute v. NLRB*, 140 F.3d 169 (2d Cir. 1998).

Significantly, the Board has found employers liable for 8(a)(1) violations where employees are forbidden to discuss unionization but are free to discuss other subjects unrelated to work, particularly when the prohibition is announced or enforced only in response to specific union activities in an organizational campaign. *Orval Kent Foods Co.*, 278 NLRB 402, 407 (1986), cited in *Williamette Industries* 306 NLRB 1010 1011 (1992).

In *Our Way, Inc.*, supra, the Board returned to the principal that in cases involving the legality of rules involving solicitations at work, the term "working time" is presumptively valid because it indicates with sufficient clarity that employees may solicit on their own time, while the term "working hours" is presumptively invalid because it connotes periods from the beginning to the end of work shifts, which includes the employees' own time.

In *Litton Systems*, 300 NLRB 324 (1990), the Board found the term "company time" also presumptively invalid because it "could reasonably be construed as encompassing both working and nonworking time spent on the company premises."[49] Also in *Burger King*, 331 NLRB 1011 (2000), the Board approved the administrative law judge's conclusion that a supervisor's restriction on solicitation while employees are "on the clock" was presumptively invalid on grounds that it served as an absolute prohibition or solicitation.

Moreover, the Board has held that rules or restrictions on conversations or communications between workers in work areas designed to dissuade employees from engaging in union activities, rather than to maintain discipline of the work force or production, may pose a violation of Section 8(a)(1), especially where the restriction or rule coincides with the advent of the union activities and where employees had no such restriction prior to the arrival of the Union. *Capital EMI Music*, 311 NLRB 997, 1006 (1993); *Horton Automatics*, 289 NLRB 405, 409 (1988).

The Board has held that even where rules of conduct are not enforced, in determining whether the maintenance of these which are in tension with the employer's right to maintain discipline and the employees' right of self-organization, the appropriate inquiry is whether the rule would reasonably tend to chill the employees in the exercise of their Section 7 rights and that any ambiguity in the rule will be construed against the promulgation thereof. *Lafayette Park Hotel*, 326 NLRB 824 (1998). Therefore, overly broad prohibitions need not actually be enforced by the imposition of punishment or discipline upon the employees to establish a violation of Section 8(a)(1). *Medeco Security Locks, Inc. v. NLRB*, 142 F.3d 733 (4th Cir. 1998), the rationale being that absence of actual enforcement or discipline shows no more than the unlawful prohibition achieved its purpose—deterring discussion among employees. *Koronis Parts, Inc.*, 324 NLRB 675 (1997).

The Board has long held that an employer may lawfully prohibit employees from distributing literature in work areas in order to prevent hazards to production that would be created by littering the premises. *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962); but this rule does not apply to a mixed-use area. *Transcon Lines*, 235 NLRB 1163, 1165 (1978), affd. in pertinent part 599 F.2d 719 (5th Cir. 1979), cited in *United Parcel Service*, 331 NLRB 539 (2000) (Board upholds judge's finding that an employer unlawfully prohibited distribution of union-related materials in a nonwork (or mixed use) area of premises between 7:30 a.m. and drivers' official start time of 8:40 a.m.).

The Board has held that while employees do not have a statutory right to use an employer's bulletin board, such use receives the protection of the Act when the employer permits them to use bulletin boards for the posting of personal notices. In these circumstances, an employer may not remove union

[49] See, also *M. J. Mechanical Services*, 324 NLRB 812, 813 (1997), "company time" is subject to a reasonable construction that solicitation at any time, including breaktime or other nonwork periods, is prohibited.

notices. *Container Corp. of America*, 244 NLRB 318 fn. 2 (1979). *Doctors' Hospital of Staten Island*, 325 NLRB 730, 735 (1998). However, when the employer maintains a rule regarding permissible posting on company bulletin boards and enforces it strictly and not discriminatorily, the rule may stand and no violation occurs.

In *Honeywell, Inc.*, 262 NLRB 1402 (1982), enfd. 722 F.2d 405 (8th Cir. 1983), the Board summarized the prevailing legal principles applicable to bulletin board postings, as follows:

> The legal principles applicable to cases involving access to company-maintained bulletin boards are simply stated and well established. In general, "there is no statutory right of employees or a union to use an employer's bulletin board." However, where an employer permits its employees to utilize its bulletin boards for the posting of notices relating to personal items such as social or religious affairs, sales of personal property, cards, thank you notes, articles, and cartoons, commercial notices and advertisements, or, in general, any non-work-related matters, it may not "validly discriminate against notices of union meetings which employees also posted." Moreover, in cases such as these, an employer's motivation, no matter how well meant, is irrelevant. [Footnotes omitted.] [Id.]

Thus, if an employer allows employees space to post items of interest, it may not impose content based restrictions that discriminate between postings of Section 7 matters and other postings. *Vons Grocery Co.*, 320 NLRB 53, 55 (1995). Furthermore, the employer may not remove union literature from general purpose bulletin boards while leaving other items of a personal and/or non-business nature. *Kroger Co.*, 311 NLRB 1187 (1993).

Employers may also violate Section 8(a)(1) by restricting the distribution (posting) of materials it considers libelous, defamatory, scurrilous, abusive, or insulting, or which would tend to disrupt order, discipline, or production in the plant, as this could be construed as applying to union literature. *National Steel Corp. v. NLRB*, 625 F.2d 131 (6th Cir. 1980). In the same vein, a no-distribution rule that reserved to the employer the right to remove information and printed material that contains offensive language was held unlawful as overly broad as it too could be interpreted as applying to union literature. *NCR Corp.*, 313 NLRB 574, 577 (1993). The employer also has been held to violate Section 8(a)(1) by removing a union newsletter from the company bulletin board because it objected to its content. *Roll & Hold Warehouse & Distribution Corp.*, 325 NLRB 41 (1997).

Regarding employer interrogations of employees, it is well established that interrogation of employees is not per se illegal. The Board has held that the test of the illegality of interrogation is whether, under all the circumstances, it reasonably tends to interfere with, restrain, or coerce employees in the exercise of their rights. *Rossmore House*, 269 NLRB 1176 (1984).

Factors to be considered about questioning of an employee include time, place, personnel involved, and information sought. *Blue Flash Express, Inc.*, 109 NLRB 591 (1954); *American Freightways Co.*, 124 NLRB 146, 147 (1959); and *NLRB v. Illinois Tool Works*, 153 F.2d 811 (7th Cir. 1946).

Thus, the employer must inform the employee of the purpose of the questioning, assure him that no reprisals will take place, and obtain his participation on a voluntary basis; the questioning must occur in a context free of employer hostility to union organization and must not be itself coercive in nature; questions must not exceed the necessity of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees. When an employer transgresses the boundaries of these safeguards, he loses the benefits of the privilege. *Johnnie's Poultry Co.*, 146 NLRB 770, 775 (1964), enf. denied on other grounds 334 F.2d 617 (8th Cir. 1965), cited in *A.S.I., Inc.*, 333 NLRB 70 (2001).

Notably, also, the Board has considered even arguably brief, casual, and not followed up questioning violative of the Act if the words and context contain elements of coercion and interference. *Sea Breeze Health Care Center*, 331 NLRB 1131 (2000). In *Sea Breeze Health Care Center*, the Board underscored its decision by citing the observation of the Fifth Circuit in *NLRB v. Laredo Coca Cola Bottling Co.*, 613 F.2d 1338, 1342 fn. 7 (1980):

> [A]n employee is entitled to keep from his employer his views so that the employee may exercise a full and free choice on whether to select the Union or not, uninfluenced by the employer's knowledge or suspicions about those views and the possible reaction toward the employee that his views may stimulate in the employer. That the interrogation might be courteous and low keyed instead of boisterous, rude, and profane does not alter the case. [Quoting from the underlying decision in *Laredo Coca Cola Bottling Co.*, 241 NLRB 167, 172 (1979).]

The Board has long held that employer threats of (and presumably actual) close supervision because of union activity violates Section 8(a)(1). *Wellstream Corp.*, 313 NLRB 698, 704 (1994); *Paul Mueller Corp.*, 332 NLRB 312 (2000); *Jennie-O Foods*, 301 NLRB 305, 310 (1991); and *Olympic Limousine Service*, 278 NLRB 932, 936 (1986).

The Board has also held that an employer may violate Section 8(a)(1) by restricting the movement of union supporters within the plant because of their union activities in order to restrict their access to other employees and by more closely watching an employee because of his union activities. *Fieldcrest Cannon, Inc.*, 318 NLRB 470 (1995).

The Board has also found Section 8(a)(1) violated when an employer solicits grievances from employees and promises to remedy them. *Aqua Cool*, 332 NLRB 95 (2000). In *Aqua Cool*, the judge noted that the employees never exchanged more than a casual greeting with certain high-level officials and that it was improbable that they would feel bold enough to register complaints without some prodding and one of the employees testified that he felt uncomfortable meeting alone with the three officials and asked if the next meeting could be held with all the drivers present (332 NLRB 95 at 101). As the judge noted further, the soliciting of grievances and promising to remedy them served the company's legitimate business interests and also appeased the employees while at the same time signaling to the employees that the union was superfluous.

The Board has also upheld a finding of a violation of Section 8(a)(1) where, in the context of interrogating an employee, a supervisor sought to have her identify problems or grievances she or other employees might have had with the company and then stated he thought the company could make things better. *Capital EMI Music*, 311 NLRB 997, 1007 (1993), enf. mem. 23 F.3d 399 (4th Cir. 1994). The judge in *EMI* noted that it was the promise, express or implied, to remedy grievances that constituted the essence of the violation, especially in the context of a union campaign, because it creates in the mind of employees the anticipation of improved conditions on the part of the company even if accompanied by no commitment to the specific corrective action.

Finally, Section 8(c) of the Act provides that:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit. [29 U.S.C. § 158(c).]

The Board has noted that Congress added Section 8(c) to the Act in 1947 as part of the Taft-Hartley Act, because it believed that the Board has made it "excessively difficult for employers to engage in any form of noncoercive communications with employees regarding the merits of unionization."[50]

Discussions and Conclusions

A few prefatory observations. It is important to note at the outset that the Respondent's allegedly unlawful conduct occurred in the context of a campaign by the Union to organize the Respondent's hourly associates. The precise date of the initiation of the campaign is unknown; however, it seems abundantly clear that the organizing effort was ongoing at least as of August 28 or 29, 2000, and that the Respondent was aware of the Union's efforts, at least by these dates.[51]

It is also of significance preliminarily that the record herein supports a finding that the Respondent opposed the Union's organizing efforts and that fact, in my view, demonstrated animus against the Union. In this regard, I note that my view of the Respondent's animus is supported by at least two incidents. First, it is undisputed on this record that Zaagman (and Veihl) unceremoniously confiscated the union notice LaNore was preparing only because he was using a piece of company-owned scrap paper. This act of extreme pettiness, while probably not unlawful in itself, certainly evinces to me a clear hostility to the Union. Second, there is the incident involving Espinoza and Switzer. Here, it seems that the Respondent was so primed in its opposition to the Union that it essentially falsely charged, without any reasonable predicate or followup investigation, two employees with distributing union materials during worktime. It is clear on this record that the employees were not distributing any such materials at all. However, evidently to the Respondent's management, the mere sight of an employee with a manila folder conversing with two other employees conjured the notion that a distribution of *union* materials was taking place in violation of company rules. In agreement with the General Counsel, I note that any examination of the circumstances surrounding the complaint allegations must be viewed with the Respondent's hostility to the Union factored in.

With the foregoing legal principles serving as a backdrop, and my preliminary observations in mind, I turn to the allegations in the complaint and my findings and conclusions of law thereon.

Regarding to the August 29 lunchroom incident, the crucial determination is whether and what Zaagman said to LaNore as he was confiscating the union meeting notice LaNore clearly was preparing on the backside of the company paper, not so much as what he did in the breakroom. Clearly, in the latter regard, Zaagman admitted that "out of ignorance of the law," prior to the encounter, he had removed union literature from the employees' bulletin board in the breakroom.[52] Given this admission, in all likelihood, he probably removed the notice that LaNore testified that he had put up earlier in his shift. Based on the cited Board authorities, this clearly is a violation of the Act, and I would so find and conclude.[53]

Regarding the Respondent's alleged promulgation (through Zaagman) of a rule prohibiting the posting of union materials on employer bulletin boards in the breakroom, I would find that Zaagman told LaNore that he could not post anything about the Union on the bulletin board in question. I would find and conclude that this constituted a violation of the Act. In this regard, I have credited LaNore's testimony,[54] mainly because it is con-

[50] *Allegheny Ludlum v. NLRB*, 104 F.3d 1354, 1361 (D.C. Cir. 1997). The Board has held that, while Sec. 8(c) is not by its terms applicable to representation cases, the "strictures of the [F]irst [A]mendment, to be sure, must be considered in all cases." *Dal-Tex Optical Co.*, 137 NLRB 1782, 1787 fn. 11 (1962).

[51] In point of fact, it is reasonably inferable that the Respondent may have been aware of the union organizing efforts as early as August 21, 2000, when various negative reports about LaNore were given to Starring. Also, Zaagman admitted that prior to the August 29 lunchroom incident, he had taken union postings off the employees' bulletin board. It therefore seems clear that the Respondent may have been aware of the Union's organizing campaign at sometime earlier than August 28–29, but clearly, in my view, the Respondent was or became fully aware of the Union's efforts when its representatives confronted LaNore on these dates.

[52] I do not credit Zaagman's attempt to mitigate his unlawful conduct where he states he took many (nonwork-related) things off the bulletin board that he considered discolored (by age) or distasteful.

[53] The Respondent evidently concedes a violation with respect to the removal of union literature allegation, inasmuch as it does not address that point in the brief.

[54] In crediting this aspect of LaNore's testimony, I am aware that he may have misspoken or even exaggerated regarding Zaagman's alleged wadding up of the notice he was preparing. However, clearly Zaagman confiscated the notice and the handling of the notice is not controlling for purposes of resolving the violation. I have also credited LaNore's testimony that employees used the bulletin board in question for posting of other nonwork-related items. Regarding LaNore's use of the Company's scrap paper, contrary to his belief, the paper was the property, albeit of little value, of the Company. In my view, LaNore had no right to use the scrap paper or any other property of the Company without authorization or permission. I would not credit his testimony that employees regularly used the paper, as this was uncorroborated and is plainly self-serving.

sistent with Zaagman's confessed lack of understanding about the employees' right to nondiscriminatory access to the bulletin board. Therefore, since he felt that it was "legal" to remove union literature, it stands to reason that he would tell LaNore that he could not post the union materials on the bulletin board in question. Thus, I would find and conclude that in telling LaNore that he could not post anything about the Union on the employee's lunchroom bulletin board, the Respondent violated Section 8(a)(1) of the Act because of the "over-breath of the rule," as well as the discriminatory nature of the restriction.[55]

Turning to the August 29 incident between Jasick and LaNore, it is noteworthy to me that the encounter in all likelihood emanated from the lunchroom incident, which Zaagman probably reported to management. The General Counsel argues that Jasick, like Zaagman, prohibited LaNore from posting union materials on the employees' bulletin board and threatened him with discipline for doing so. However, the conversation between LaNore and Jasick, irrespective of whose version is credited, actually does not support his point. In my view, the conversation from Jasick's point of view centered on what he thought was LaNore's impermissible use of company assets—the paper—to write union notices during work or nonbreak periods. Jasick admonished LaNore in this regard and advised rather ominously that LaNore might receive a call from management for doing this and that discipline was a possibility. LaNore's testimony regarding the encounter does not materially differ from Jasick's, with the use of company assets during work hours being central to the encounter. Jasick no doubt was acting on information provided by Zaagman or Veihl, especially regarding LaNore's not being on break,[56] when he attempted to write up the notice on recycled paper. Thus, in my view, LaNore's encounter with Jasick in effect was in a sense a continuation of the breakroom incident. However, in disagreement with the General Counsel, I do not believe Jasick prohibited LaNore from using the bulletin board to post union materials; rather, he admonished LaNore not to use company property during nonbreaktime to support the Union or engage in activities sympathetic to the Union cause during nonbreak time. My research has disclosed no definitive Board authority that would allow employees to use company assets, even of minimal intrinsic value, without the permission or authority of the company. Therefore, in my view, LaNore was not free to use the recyclable or scrap paper as he saw fit. Moreover, while LaNore was engaging in protected activity—preparing a notice for posting on the bulletin board—in my view, this does not undercut the employer's right to control use of its property—Jasick's issue. Also, it is clear that employers may control the conduct of employees during nonbreak hours. Thus, it follows, in my view, that the Jasick-LaNore encounter, while connected somewhat to the Zaagman-LaNore encounter of the same date, does not constitute a violation of the Act. I would recommend dismissal of this aspect of the complaint since, in context, LaNore's rights were not interfered with.

Similarly, considering all things, I would not find that Jasick unlawfully interrogated LaNore about his union activities because, such as it was, the interrogation dealt essentially with questions about whether LaNore used company paper to write the notice, not his union sympathies or activities. Also, because while I believe that Jasick at the least told LaNore that he would report the matter to the Respondent's human resources, this was not a threat to discipline LaNore for engaging in union activities but for using company assets at what Jasick believed were inappropriate times. Therefore, I would also recommend dismissal of this aspect of the complaint.[57]

I would also credit LaNore's testimony regarding his second encounter with Zaagman on August 29, wherein he claimed Zaagman told him that the breakroom matter would be reported to management and that he would have LaNore suspended. Again, in this regard, it seems clear that Zaagman was still operating under the misconception that LaNore's activities were not protected and, in spite of LaNore's protests and his giving Zaagman a copy of the employees' rights card, Zaagman seemingly persisted in his ultimately unfulfilled threat. In my view, Zaagman's conduct was clearly coercive even though LaNore was steadfast in defending his right to engage in protected activity. I note that the Respondent took no action to correct Zaagman's wrongful conduct and, accordingly, I would find and conclude that Zaagman threatened LaNore with discipline (suspension) for and because of LaNore's engaging in activities in support of the Union in violation of Section 8(a)(1).

With respect to the September 15 incident involving Espinoza, Switzer, and McFalls, it must be remembered that the two maintenance workers were called in to meet with McFalls because they were thought to be engaging in union activity—passing out pamphlets—on which mistaken predicate a supervisor deemed them to be disturbing or interfering with another worker. Thus, in context, the meeting was convened because of management's concerns about the possibility that some union-related activity was taking place on the work floor, during a nonbreaktime. When McFalls confronted the two and determined that they were not distributing materials, he, nonetheless, advised the men when "on the clock," not on break, they should be working. When Espinoza asked specifically whether employees could talk about the Union, McFalls told him (and Switzer) that employees could talk about anything at breaktime,

[55] I have considered the testimony of Veihl and did not find it persuasive. Notably, Veihl's testimony about the break room incident essentially corroborated Zaagman's version of the circumstances leading to the confrontation. However, regarding Zaagman's statement, Veihl testified that Zaagman told LaNore he could not use company property to write the notice and that he (Zaagman) would so inform (the) human resources (department). Significantly, Veihl did not refute LaNore's version of all statements LaNore claimed were made by Zaagman. Accordingly, Veihl's testimony did not comprehensively address the allegations in question. Thus, LaNore's version of the total episode was more complete as well as more plausible.

[56] As noted, Zaagman and Veihl testified that they assumed that LaNore was not on break and probably communicated this to Jasick.

[57] So that the record is clear, my findings and conclusions are that the Respondent, via Jasick, did not coercively interrogate LaNore about his union activities, did not promulgate overly broad rules disparately prohibiting employees from posting union literature on employees' bulletin boards, and did not threaten employees with discipline for engaging in such postings.

lunch, and after work but, while on the clock, they were expected to be working. However, McFalls adamantly denied that the Respondent prohibited its workers from talking about sports or other topics while passing each other in the aisles, and that the Company had not prohibited talking while working and that employees could talk freely about current events.[58] I would agree with the General Counsel that McFalls (and the Respondent) violated Section 8(a)(1) of the Act in informing Espinoza and Switzer that they could only talk about the Union during breaks, lunch, or after work, while allowing conversations about other nonwork-related topics. On this point, Espinoza and Switzer, at the time they were observed talking with the hi-lo operator, were doing exactly what employees, according to McFalls, were allowed to do and did—talk about various issues while passing one another in the aisles. However, the Respondent's management, evidently sensitive at this time to the Union and its campaign, pounced upon the two because they were suspected of engaging in union activity. In this context, the Respondent's admonition not only was discriminatory but clearly coercive of the employees' Section 7 rights.

As to the conversation between Minarovic and Jasick, the resolution of the matter rests on credibility; that is, if the statements attributed to Jasick are proven, clearly the statements, under Board precedent, would pose a violation of the Act. In this regard, I believe that Minarovic testified straightforwardly and clearly, without embellishment, and even memorialized the encounter in writing. She was a convincing and apparently honest witness. Jasick, first, as noted, could not specifically even recall conversing with Minarovic on October 4 but conceded that he may have; he also conceded that he may have talked about the Union. On balance, I would conclude that he indeed asked Minarovic how she felt about the Union, solicited grievances from her, and impliedly promised to remedy her grievances and, therefore, violated the Act. I note that while Jasick customarily asked Minarovic about how things were on the job, on October 4 he coupled his normal queries with a solicitation of her views on the Union; then, cryptically mentioned a list he maintained on which her name was not checked off; and then implied that he would look into her concerns, which he solicited, regarding the Company's promotion policy.

The Respondent's behavior through a highly placed official, in my view, is both coercive and intimidating to the employees, as attested to by Minarovic. Clearly, a veiled or cryptic reference to an employer's maintained list of employees may reasonably conjure fears about an employee's standing with the company and her job security generally. Also, to be sure, an employer who implies that it will take care of an employee's grievance, here the Respondent's complained-of promotion policy, deprives the employee of an unfettered choice of her bargaining representative. I would find and conclude that in interrogating Minarovic about her views on the Union, soliciting her grievances, and suggesting that it would remedy them, the Respondent interfered with and coerced her in the exercise of her Section 7 rights, all in violation of Section 8(a)(1) of the Act.

Finally, turning to the allegations of the Respondent's campaign of harassment of LaNore, including the closer monitoring of him and restrictions on his movements around the plant, it is again worthwhile to examine the circumstances surrounding the matter. First, in mid-August 2000, Starring was newly appointed to the quality control position and within a short time received complaints about LaNore from some of his fellow inspectors as well as LaNore's supervisors,[59] that LaNore had certain work performance issues—mainly wandering the plant, being missing unaccountably from his duty station, and not being available at the beginning of his shift to receive a "hand off" of information from the preceding shift's inspectors. Starring credibly and candidly testified that about August 28–29, acting on a confirmation of LaNore's being missing from his work station for about an hour, he instructed Gould to keep an eye on LaNore. As chance would have it, during his shift that same day, LaNore experienced his lunchroom encounter with management. The question is whether LaNore's subsequent contacts with management in total context were indicative of a campaign of harassment of a union supporter or merely oversight of an employee with somewhat of a reputation with management for poor work habits.

This aspect of the charges, in my view, presents a close case. It is well established that union activity or sympathy does not insulate an employee from having to perform the job for which he receives compensation. Management is certainly entitled to assure itself that workers are doing their job, attending to tasks and being on time and available when needed. In LaNore's case, it is beyond dispute that several of his fellow inspectors actually complained about him to management. Thus, in my view, Starring was entitled to investigate and confirm these reports by placing him under observation and questioning when, for instance, he was observed in areas of the plant deemed off limits to him and other employees. Is this a closer monitoring of LaNore because of his support for the Union; are his movements being more restricted because of the Union? I tend to think the answer is no to both questions. First and foremost, the General Counsel adduced no evidence of other employees who were or were not monitored or were or were

[58] Both Espinoza and Switzer confirm the essentials of McFalls' conversation about the Respondent's policy. I note that Espinoza and Switzer evidently had different understandings of the Respondent's policy about talking about nonwork-related topics. However, Switzer's understanding is consistent with the policy as testified to by McFalls. Thus, I would conclude that Espinoza was probably mistaken in his interpretation of the policy. I note also that McFalls acceded that the Union was was a topic of discussion and interest at the plant during the campaign.

[59] Gould testified about several incidents dealing with LaNore's work performance issues as far back as the fall of 1999 and even as late as the summer of 2000, and perhaps a minor incident occurring in September 2000; it appears these incidents were never directly referenced in his evaluations. (See R. Exh. 2, LaNore's Performance Review 12/01/1999–12/01/2000, and R. Exh. 3, LaNore's Associate Review for 1999.) Notably, neither of the reviews specifically mentions LaNore's plant wandering, his not being available at his work station, or his not assisting coworkers when needed, or not following up timely on instructions given by supervisors. Thus, I have not given much of my weight to these alleged shortcomings of LaNore as an employee for purpose of resolving the harassment allegations.

not restricted in their movement around the plant.[60] Therefore, there is no frame of reference or comparison data to judge whether LaNore was being harassed or treated different from other employees who may have had work performance problems similar to LaNore. While Starring, in his September 8 conversation with LaNore, admitted that he knew about LaNore's writing of the union notice and he raised the subject of the Union tangentially, he dealt only with LaNore's work performance issues, which (as common sense would dictate) would or could cause, in Starring's view, supervisors to pay closer attention to him, and advised him in effect to shape up.[61] Therefore, I cannot conclude that Starring's meeting with LaNore (or his previous directions to monitor him) reflected harassment or was part of any campaign to harass LaNore because of his union activities. Moreover, on balance, I cannot conclude that LaNore was targeted or selected for closer monitoring or more restricted in his movements around the plant because of his union activities. I would recommend dismissal of this aspect of the complaint mainly on sufficiency grounds. In my view, the record evidence does not support the allegations of harassment, including closer supervision of and more restrictions on LaNore's movements around the plant.

CONCLUSIONS OF LAW

1. Johnson Technology, Inc., the Respondent herein, is an employer engaged in commerce within the meaning of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By its supervisors' disparately prohibiting employees from writing and posting union literature on employees' bulletin boards and/or the employee breakrooms, the Respondent violated Section 8(a)(1) of the Act.

4. By disparately removing union literature posted on the employees' bulletin board in the employee breakroom, the Respondent violated Section 8(a)(1) of the Act.

5. By threatening employees with discipline for and because of their engaging in activities supportive of the Union, the Respondent violated Section 8(a)(1) of the Act.

6. By informing employees that they could only converse about the Union during breaks, lunch, and after work, while allowing, without restriction, conversations about other nonwork-related topics, the Respondent violated Section 8(a)(1) of the Act.

7. By soliciting (interrogating) employees regarding their views of the Union, their work-related grievances, and impliedly promising to remedy them, the Respondent violated Section 8(a)(1) of the Act.

8. By the aforesaid conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

9. The Respondent has not violated the Act in any other way, manner, or respect.

The Remedy

Having found that the Respondent has engaged in unfair labor practices warranting a remedial order, I shall recommend that it cease and desist from engaging in such conduct and that it take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[62]

ORDER

The Respondent, Johnson Technology, Inc., Muskegon, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Disparately prohibiting employees from writing and posting union literature on employees' bulletin boards and/or in employee breakrooms.

(b) Disparately removing union literature posted on employees' bulletin boards in employee breakrooms.

(c) Threatening employees with discipline for and because of their engaging in activities supportive of the Union.

(d) Informing employees that they may only converse about the Union during breaks, lunch, and after work, while allowing, without restriction, conversations about other nonwork-related topics.

(e) Soliciting (interrogating) employees regarding their views of the Union, their work-related grievances, and impliedly promising to remedy the grievances.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Muskegon, Michigan, copies of the attached notice marked "Appendix."[63] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to

[60] The complaint, I note, alleges that the Respondent has engaged in a campaign of harassment of selected employees, more closely watching *them* and restricting *their* movements.

[61] I have credited Starring's version of his September meeting with LaNore, as well as his testimony regarding the reports he received about LaNore which prompted him to instruct supervisors to observe LaNore.

[62] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[63] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

all current employees and former employees employed by the Respondent at any time since September 15, 2000.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 31, 2001

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT disparately prohibit employees from writing and posting union literature on employees' bulletin boards and/or in employee breakrooms.

WE WILL NOT disparately remove union literature posted on employees' bulletin boards in employee breakrooms.

WE WILL NOT threaten employees with discipline for and because of their engaging in activities supportive of the Union.

WE WILL NOT inform employees that they may only converse about the Union during breaks, lunch, and after work, while allowing, without restriction, conversations about other non-work-related topics.

WE WILL NOT solicit (interrogate) employees regarding their views of the Union, their work-related grievances, and impliedly promise to remedy the grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

JOHNSON TECHNOLOGY, INC.